MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Approving an updated form of Vertical Disposition and Development Agreement with Vertical Developers, and a Major Phase Application for residential projects on Blocks 50, 51, 53, 54 at the Hunters Point Shipyard Phase 1, including a) Schedule of Performance Report, b) a Major Phase and Project Housing Data Table, and c) Schematic Designs; and adopting environmental findings pursuant to the California Environmental Quality Act; Hunters Point Shipyard Redevelopment Project Area

EXECUTIVE SUMMARY

The agreement implementing the first phase of redevelopment of the Hunters Point Shipyard ("Shipyard") is the Phase 1 Disposition and Development Agreement ("Phase 1 DDA"), between the Office of Community Investment and Infrastructure or "OCI" as successor to the San Francisco Redevelopment Agency and HPS Development Co, LP ("Lennar" or the "Developer"). The Phase 1 development program includes the construction of infrastructure, parks, and housing. Under the Phase 1 DDA Lennar is required to build the infrastructure and parks, and then sell land to various vertical developers, either Lennar affiliates or third-parties including community builders, to build housing.

Vertical housing development is governed by Vertical Disposition and Development Agreements "Vertical DDA" or "VDDA," that grant development rights and responsibilities to vertical developers. A form of the Vertical DDA that was to be used for each development was attached to the Phase 1 DDA in 2005 and approved by the former San Francisco Redevelopment Agency Commission ("SFRA Commission").

However, since 2005 the Shipyard’s Phase 1 development environment has changed. There have been five DDA amendments that changed the terms of the DDA, the Phase 1 project has evolved and progressed, and the development and financing markets underwent substantial change. As a result, the form of Vertical DDA requires updating to conform and respond to these changes and reflect the development in Phase 1 anticipated by OCI and Lennar.

The Phase 1 DDA includes a process for vertical developers to receive development approvals in Phase 1 of the Shipyard called a "Major Phase." Under a Major Phase Application, vertical developers are required to submit overall plans for one or more development blocks. In the Major Phase Application vertical developers propose a development program (including a form Vertical DDA) and specific architectural designs for buildings.

This Major Phase Application is for Blocks 50, 51, 53, and 54 and includes approximately 250 units of housing (a mixture of townhomes, apartments, and flats), 10.5 percent of which will be
affordable in accordance with the Phase 1 DDA (see Major Phase Map, Attachment 1). The Major Phase Application for these blocks is complete and includes schematic designs that were approved in 2009 by the SFRA Commission. The schematic designs have received all the necessary subsequent approvals and most of the blocks have approved Site Permits and Addendums from the Department of Building Inspection. A schematic design overview is included as Attachment 2 and a Major Phase Schedule of Performance Report is included as Attachment 3. OCII staff has also determined that the Major Phase Application is complete, is consistent with the Phase 1 DDA and the horizontal schedule of performance, the Shipyard Redevelopment Plan (the “Plan”) and the Phase 1 Design for Development (“D for D”).

Staff recommends approving an updated form of Vertical Disposition and Development Agreement with vertical developers, and a Major Phase Application for residential projects on Blocks 50, 51, 53, 54 at the Hunters Point Shipyard Phase 1, including a) Schedule of Performance Report, b) a Major Phase and Project Housing Data Table, and c) Schematic Designs; Hunters Point Shipyard Redevelopment Project Area.

BACKGROUND

Hunters Point Shipyard and Candlestick Point Overview and Summary

The Hunters Point Shipyard and Candlestick Point areas (together the “Project”) are comprised of approximately 750 acres along the long-neglected waterfront lands of southeastern San Francisco (see attached Project Map, Attachment 4). These lands will be developed and transformed into productive areas for jobs, parks, and housing, including affordable housing through public-private partnerships (“DDAs”) with OCII. The Project will be implemented in two phases by affiliated but separate developers managed by Lennar under separate DDAs (the “Phase 1 DDA” and the “Phase 2 DDA”).

The Project will deliver over 12,000 new homes, approximately 32 percent of which will be below market rate and will include the rebuilding of the Alice Griffith public housing development consistent with the City’s HOPE SF program, up to 3 million square feet of research and development space, and more than 350 acres of new parks in the southeast portion of San Francisco. In total, the Project will generate over $6 billion of new economic activity to the City, more than 12,000 permanent jobs, hundreds of new construction jobs each year, new community facilities, new transit infrastructure, and provide approximately $90 million in community benefits. The Project’s full build out will occur over 20-30 years, but over 1,000 units of housing and 26 acres of parks will be completed over the next 5 years in the first phase of the Shipyard.

Phase 1 Development Program

In December 2003, the SFRA Commission authorized the Phase 1 DDA with Lennar. The Phase 1 DDA obligates Lennar to construct the infrastructure necessary to support the total vertical development of 1,498 housing units in the Phase 1 development and 26 acres of open space and parks.
Affordable Housing

- Under the Phase 1 DDA, 27 to 40 percent of all the 1,498 Phase 1 units will be affordable.
- Within this total, at least 10.5 percent of the 1,280 private vertical developer units (approximately 134 units) constructed by vertical developers will be affordable at 80 percent of Area Median Income (“AMI”).
- Of the 1,498 Phase 1 units, 218 of the units will be OCII subsidized affordable units at 50 percent of AMI.
- In addition, approximately 60 units will be built on Block 49 and all of those units will be affordable at 50 percent of AMI.

*A Major Phase Application for Block 49 is anticipated to be presented to OCII in late 2013.*

Community Benefits and Community Builders

The Phase 1 DDA also obligates Lennar through a Community Benefits Agreement, to provide training, assistance, and contracting opportunities to community residents and organizations, as well as offer opportunities for development of certain lots to Bayview Hunters Point-based developers and contractors (“Community Builders”). Throughout this Major Phase Application’s predevelopment, design, and permitting process, Lennar has been engaged with Community Builder partners, MDC/C Churchwell, LLC on a portion of Block 53, and BAMEC Inc. on a portion of Block 54. The Community Builders have been an integral part of the development process for this Major Phase Application and they will play key roles and carry responsibilities during development operations commencing late in 2013.

Phase 1 DDA Amendments and the form of Vertical DDA

The Phase 1 DDA has been amended since its approval in 2003. The SFRA Commission authorized; 1) on April 5, 2005, a First Amendment to the DDA; 2) on October 17, 2006, a Second Amendment to the DDA; 3) on August 5, 2008, a Third Amendment to the DDA; 4) on August 19, 2008, a Fourth Amendment to the DDA; 5) on November 30, 2009 a Fifth Amendment to the DDA; and 6), and on December 19, 2012 the Commission on Community Investment and Infrastructure (the “Commission”) approved a Sixth Amendment to the DDA.

The form of Vertical DDA was originally approved through the First Amendment to the DDA in 2005 but now requires revisions. In anticipation of these revisions, the Fifth Amendment to the DDA allowed for the revised form of Vertical DDA to be submitted along with the “first” Major Phase Application in Phase 1. The Fifth Amendment to the DDA required Lennar to use commercially reasonable efforts to submit a minimum of one Major Phase Application every twenty four months after the effective date of the Fifth Amendment (November 2009), which coupled with various approved delays was January 2013. However, the uncertainty that resulted from the State-wide redevelopment dissolution process among other things prevented a Major Phase Application from being submitted until now.

Schematic Design Approval and Development Summary

In April 2009, by Resolution No. 36-2009, the SFRA Commission approved schematic designs for Blocks 50 and 51 and in November 2009, by Resolution No. 126-2009, the SFRA Commission approved schematic designs for Blocks 53 and 54 (see Attachment 2, schematic
design overview). There have been no substantive changes to the schematic designs since they were approved in 2009:

- **Block 50**: twenty-five for-sale townhome housing units, three of which will be affordable, 36 parking spaces, and 25 bicycle spaces.
- **Block 51**: sixty-three for-sale apartment units, six of which will be affordable, 63 parking spaces, and 32 bicycle spaces.
- **Block 53**: twenty-four for-sale townhome style housing units, and 69 for-sale flat-style housing units, for a total of 93 units of which nine will be affordable, 117 parking spaces, and 64 bicycle spaces.
- **Block 54**: thirty for-sale townhome style housing units, and 36 for-sale flat-style housing units, for a total of 66 units of which seven will be affordable, 96 parking spaces, and 42 bicycle spaces.
- **All Blocks Total**: 247 units, of which 25 will be affordable, 312 parking spaces, and 163 bicycle spaces. See Attachment 5, the Major Phase and Project Housing Data Table for complete development details on these blocks.

**DISCUSSION**

The Phase 1 development is well underway (70-80 percent of the horizontal infrastructure construction is complete) and the Phase 2 entitlements are fully in place. Now, through Lennar’s affiliate vertical developer, Lennar is planning to directly build Blocks 50, 51, 53, and 54 and as part of finalizing that process, revisions and clarifications to the form of Vertical DDA will need to be made to update, conform, and streamline the document to allow it to be used for Blocks 50, 51, 53, and 54 and future Phase 1 blocks.

There are no substantive changes to the 2005 version of the Vertical DDA other that what is listed below and there are no changes to the Phase 1 DDA being made through this Vertical DDA. This Major Phase Application Approval and the form Vertical DDA updates will enable the Developer to respond to the current market and ensure that the Project can gain momentum, while preserving the community benefits that were included in the original form in 2005.

In addition to the community benefit programs, Lennar will be paying the second $500,000 installment of the $1,000,000 "Developer's Community Benefits Fund Advance" upon the close of escrow of the first block (the first $500,000 payment was made in June 2012). The Community Benefits Fund and the Legacy Foundation for Bayview Hunters Point ("BVHP") have been formed in accordance with the Phase 1 DDA which calls for a BVHP Representative Entity, i.e. the Legacy Foundation for Bayview Hunters Point, to ensure that a portion of the net proceeds from Phase 1 and half a percent of the sales price of all market rate housing unit sales in Phase 2 will be used and invested for the benefit of the BVHP community.

**Summary of Major Phase Application**

The Phase 1 DDA includes a Major Phase Application process for vertical developers to receive development approvals in Phase 1 of the Shipyards. Under a Major Phase Application, vertical developers are required to submit overall plans for one or more development blocks. The Major Phase Application proposes intensities of development, bulk, and massing of buildings, and specific architectural designs for buildings. A Major Phase Application also includes a report
regarding compliance with the horizontal schedule of performance that describes what the status is of the horizontal schedule of performance and what if any infrastructure or deferred infrastructure will be completed as part of the Major Phase. The Major Phase Application includes housing data tables that detail the overall development program including for example, the number of units proposed, the number, location and size of affordable units, whether the project is residential or includes other land uses, parcel acreage, and the like. It also includes a form of Vertical DDA for the Major Phase Application that describes the vertical developers’ rights and responsibilities and includes a construction schedule. Lastly, the Major Phase Application must include a basic concept or schematic design. OCII staff has determined that the Major Phase Application is complete, is consistent with the Phase 1 DDA and the horizontal schedule of performance, the Plan, and the D for D.

**Vertical DDA Summary of Updates**

Broadly, the updates to the form of Vertical DDA include:

1. Updates to conform to the various DDA amendments since 2005.
2. Provide consistency with the DDA for Candlestick Point and Phase 2 of the Shipyard.
3. Generally make streamlining and or other conforming but technical updates that do not affect the vertical development program such as reflecting the dissolution of the Redevelopment Agency.

The substantive updates to the form of Vertical DDA include:

1. **OCII Costs**
   - **2005 VDDA**: Vertical developers had to pay for OCII costs on a time and materials basis.
   - **2013 VDDA**: Vertical developers will have a choice of paying for OCII costs on a time and materials basis, or by paying a fixed fee formula based on construction costs similar to that used by the Planning Department under the City’s Planning Code. Under the fixed fee formula, vertical developers will be responsible for any additional OCII costs resulting from non-customary special requests or inadequate document submissions.

   **Analysis**: This is a streamlining change. On a fixed-fee basis OCII costs are more certain and defined but full payment is owed in advance at the Major Phase Application submittal. On a time and materials basis, OCII costs are billed monthly but no advance payment is required. Offering a choice of methods to pay OCII costs provides flexibility to vertical developers to better manage their project’s cash flow. Both methods of cost reimbursement ensure that OCII’s costs relative to the Major Phase Application are reimbursed.

2. **Affordable Units: 50 and 80 percent Area Median Income Units**
   - **2005 VDDA**: 15 percent of the Phase 1 vertical developer units were to be affordable. 30 percent of those were to be at 50 percent AMI, with the remaining units to be at 80 percent AMI.
   - **2013 VDDA**: 10.5 percent of the Phase 1 vertical developer units are required to be offered as 80 percent AMI and no 50 AMI units are required to be built except on Block 49. If a Block 49 VDDA fails to get executed then the 50
AMI units must be re-distributed throughout Phase 1 as was required originally in 2005.

**Analysis:** This is a DDA amendment conforming change. The December 2012 Sixth Amendment to the DDA required that Block 49 include all the Phase 1 inclusionary 50 percent AMI units (a total of 60 units). This requirement will produce the same number of 50 percent AMI units in Phase 1. In addition Lennar has agreed to pay a $1 million in-lieu fee for affordable housing in the Project and provide gap financing for Block 49 (none of which were previously required under the Phase 1 DDA or the Vertical DDA).

3. **Schedule of Performance**

   **2005 VDDA:** The schedule of performance required a date for commencement and completion subject to negotiation at the time of execution of the Vertical DDA.

   **2013 VDDA:** The schedule of performance requires a date for commencement and completion that is consistent with the timelines required under the City’s building permits, and gives the Executive Director the ability to provide two six-month extensions if requested. If the schedule of performance is not followed, the vertical developer must return to the Commission to request a new schedule of performance.

   **Analysis:** This is a streamlining change. Providing these limited time extensions allows a reasonable amount of flexibility for when projects encounter delays and simplifies finalizing Vertical DDAs for future blocks because the schedule now has this limited time buffer.

4. **Developer Default under VDDA and Right of Reverter**

   **2005 VDDA:** Phase 1 land can revert to OCII ownership in the event of a default.

   **2013 VDDA:** OCII’s rights of reverter were replaced by the requirement of the Developer to post performance bonds which were posted in 2008. In the event of an uncured default by vertical developer, OCII may terminate the Vertical DDA and the vertical developer would not be allowed to continue or restart construction without the approval of OCII.

   **Analysis:** This is a DDA amendment conforming change. This update is required by the August 2008 Fourth Amendment to the DDA and Lennar posted the necessary performance bonds in 2008. This change provided greater financing flexibility for the Phase 1 development. In the case of a default, OCII can still terminate the VDDA.

5. **Insurance**

   **2005 VDDA:** Vertical DDA was to include specific insurance types and coverages at the time the Vertical DDA was to be executed.

   **2013 VDDA:** Vertical DDA includes a description of insurance types and coverages in amounts that are commercially reasonable and customary for the type of project in question, including general liability, workers comp, builders all risk, and pollution coverage when doing pollution work. In addition, vertical developers that are Affiliates of Lennar are required to obtain a
Contractor Consolidated Insurance Pool ("CCIP") or an Owner Consolidated Insurance Pool ("OCIP") on for-sale projects covering all eligible contractors and subcontractors.

**Analysis:**
This is a streamlining change. Requiring insurance that is commercially reasonable but only specifying the key types of insurance and amounts streamlines the VDDA process while still providing the same level of insured protection to OCII. It also provides the flexibility to respond to insurance market changes without having to update the insurance section of the VDDA with each change.

**Next Steps and Schedule**
After this Major Phase Approval, Lennar will work to finalize construction contracts for the blocks in this Major Phase and will continue to coordinate with Young Community Developers ("YCD") to start referring BVHP and San Francisco residents to work on the construction.

Construction on Blocks 50 and 51 will commence in June 2013 with construction on Block 50 finishing in June 2014 and construction on Block 51 finishing in December 2014. Ground breakings for Blocks 53 and 54 are anticipated in September 2013 with construction on both blocks finishing in December 2015, see below:

- **Blocks 50:** Start June 2013/End June 2014
- **Blocks 51:** Start June 2013/End December 2014
- **Blocks 53:** Start September 2013/End December 2015
- **Blocks 54:** Start September 2013/End December 2015

**Small Businesses and Local Workforce**
In order to promote economic development in the Shipyard, the Vertical DDA and the Phase 2 DDA both require Lennar and vertical developers to follow OCII's equal opportunity program, which substantially consists of, 1) the Bayview Hunters Point Employment and Contracting Policy ("BVHP ECP"), 2) the Small Business Enterprise Policy ("SBE"), 3) the Nondiscrimination in Contracts and Equal Benefits Policy, 4) the Minimum Compensation Policy, 5) the Health Care Accountability Policy, 6) the Prevailing Wage Policy, and 7) the Card Check Neutrality Policy.

With respect to SBEs, OCII established a 50 percent goal for small business participation in OCII and OCII-assisted contracts. Vertical developers must make good faith efforts to meet this goal. For local workforce, the BVHP ECP is designed to ensure that developers conduct their construction workforce hiring, permanent/temporary workforce hiring, and trainees program in a way that benefits BVHP and San Francisco residents. The construction workforce hiring and the permanent/temporary workforce hiring has a goal that 50 percent of the workforce hires be qualified BVHP Project Area residents or San Francisco residents with First Consideration to BVHP Project Area residents.

On the Shipyard to date Lennar has achieved 76.4 percent SBE participation on its vertical projects in the area of professional service contracts, of that 28 percent were from minority-owned firms and 29.3 percent were from women-owned firms. Hundreds of short and medium term construction jobs are anticipated to be created during this Major Phase. Lennar is
already working with YCD to start referring BVHP and San Francisco residents to work on this construction. Attached are Lennar’s workforce projections for construction hiring for Blocks 50, 51, 53, 54 (see Major Phase Blocks 50, 51, 53, and 54 Jobs Projection, Attachment 6).

Community Outreach

OCII staff briefed the Mayor’s Hunters Point Shipyards Citizens Advisory Committee (“CAC”) on the details of this Vertical DDA revision and the Major Phase Application during its meetings in April and May 2013. At these meetings, OCII staff conducted a review and had discussion on the document and the CAC recommended that we move forward to the Commission.

Enforceable Obligation

On December 14, 2012, the California State Department of Finance issued a Final and Conclusive Determination under California Health and Safety Code § 34177.5 (i), that the Phase 1 DDA and the Phase 2 DDA are enforceable obligations that survived the dissolution of the Redevelopment Agency. The Phase 1 VDDA is an implementing document of that Phase 1 DDA and the Phase 1 DDA is shown on line HPSY 21 of the approved Recognized Obligation Payment Schedule for January to June 2013, which was approved by the Oversight Board and the Department of Finance.

California Environmental Quality Act

The SFRA Commission and the San Francisco Planning Commission (“Planning Commission”) adopted California Environmental Quality Act (“CEQA”) findings, a statement of overriding considerations, and certified the Final Environmental Impact Report for Phase 1 in 2000 (“Phase 1 EIR”), and subsequently issued a First and Second Addendum to the Phase 1 EIR in 2003 and 2006, respectively, to address project changes. The Commission has received the Phase 1 EIR and the Phase 1 EIR was made available to the public during prior Commission meetings.

Additionally, the SFRA Commission and the Planning Commission certified the Final EIR for Phase 2 (“Phase 2 EIR”) in 2010 and adopted findings and a statement of overriding considerations. The Phase 2 EIR updated the transportation analysis and transportation plan, including the transportation system management plan, for Phase 1 and Phase 2 of the Shipyards.

The Phase 1 DDA requires Lennar to submit Major Phase Applications for the Shipyards’ development in accordance with the Phase 1 DDA, the D for D, and is pursuant to and in furtherance of the Plan. OCCII staff has reviewed the Major Phase Application submitted by Lennar and finds it to be within the scope of the Project analyzed in the Phase 1 EIR and subsequent addenda as well as the Phase 2 EIR and no additional environmental review is required pursuant to State CEQA Guidelines Sections 15180, 15162, and 15163.

(Originated by Thor Kaslofsky, Project Manager, Hunters Point Shipyards)

Tiffany Bohee
Executive/Director
Attachment 1: Major Phase Application Map
Attachment 2: Overview of Schematic Designs for Blocks 50, 51, 53, and 54
Attachment 3: Major Phase Schedule of Performance Report
Attachment 4: Project Map
Attachment 5: Major Phase Housing and Project Data Table Blocks 50, 51, 53, and 54
Attachment 6: Major Phase Blocks 50, 51, 53, and 54 Jobs Projection